RULE 80C. REVIEW OF FINAL AGENCY ACTION

(a) Mode of Review. A review of final agency action or the failure or refusal of an agency to act brought in the Superior Court pursuant to 5 M.R.S.A. § 11001 et seq., Maine Administrative Procedure Act, or in the District Court to review disciplinary decisions of occupational licensing boards and commissions under 4 M.R.S.A. § 152 (10) and 10 M.R.S.A. § 8003, shall be governed by these Rules of Civil Procedure as modified by this rule, except to the extent inconsistent with the provisions of a statute. Proceedings for judicial review of final agency action or the failure or refusal of an agency to act shall be commenced by filing a petition as provided by 5 M.R.S.A. § 11002(1) and the contents of the petition shall be as provided by 5 M.R.S.A. § 11002(2). A petition for review shall be served as provided by 5 M.R.S.A. § 11003. No responsive pleading need be filed except as provided by 5 M.R.S.A. § 11005. Leave to amend pleadings shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action.

(b) Time Limits; Stay. The time within which a review of final agency action or the failure or refusal of an agency to act may be sought shall be as provided by 5 M.R.S.A. § 11002(3). An application for a stay of final agency action shall be as provided by 5 M.R.S.A. § 11004.

(c) Manner and Scope of Review. The manner and scope of review of final agency action or the failure or refusal of an agency to act shall be as provided by 5 M.R.S.A. § 11007(2) through § 11007(4).

(d) Power of Court to Correct or Modify Record. Judicial review shall be confined to the record upon which the agency decision was based, except as provided by 5 M.R.S.A. § 11006(1). The reviewing court may require or permit subsequent corrections to the record as provided by 5 M.R.S.A. § 11006(2).

(e) Additional Evidence. A party who intends to request that the reviewing court take additional evidence or order the taking of additional evidence before an agency as provided by 5 M.R.S.A. § 11006(1) shall file a motion to that effect within 10 days after the record of the proceedings is filed under subdivision (f), but not before the record of proceedings is filed. The failure of a party to file such a motion shall constitute a waiver of any right to the taking of additional evidence. Upon the filing of a motion for the taking of additional evidence, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court specifying the future course of proceedings with that motion. The

moving party shall also file with the motion a detailed statement, in the nature of an offer of proof, of the evidence intended to be taken, except as provided below. That statement shall be sufficient to permit the court to make a proper determination as to whether the taking of additional evidence as presented in the motion and offer of proof is appropriate under this rule and if so to what extent. After hearing, the court shall issue an appropriate order specifying the future course of proceedings.

(f) Record. The agency shall file the complete record of the proceedings under review as provided by 5 M.R.S.A. § 11005. If the petitioner believes that the record filed by the agency either is incomplete or over-inclusive, the petitioner shall serve notice upon the agency within 10 days after the record is filed. This notice shall include specific proposals by the petitioner regarding additions to or deletions from the record filed by the agency. The parties shall attempt to agree on the contents of the record. If the parties cannot agree, the petitioner may request that the court modify the contents of the record.

(g) Filing of Briefs. Unless otherwise ordered by the court, all parties to a review of governmental action shall file briefs. The petitioner shall file the petitioner's brief within 40 days after the date when the administrative agency files the record of the proceedings with the court. Any other party shall file that party's brief within 30 days after the service of the petitioner's brief, and the petitioner may file a reply brief 14 days after last service of the brief of any other party. However, no brief shall be filed less than 6 calendar days before the date set for oral argument. On a showing of good cause the court may increase or decrease the time limits prescribed in this subdivision.

(h) Consequence of Failure to File. If the petitioner fails to comply with subdivision (g) of this rule, the court may dismiss the action for want of prosecution. If any other party fails to comply, that party will not be heard at oral argument except by permission of the court.

(i) Joinder With Independent Action. If a claim for review of governmental action under this rule is joined with a claim alleging an independent basis for relief from governmental action, the petition shall contain a separate count for each claim for relief asserted, setting forth the facts relied upon, the legal basis of the claim, and the relief requested. A party in a proceeding governed by this rule asserting such an independent basis for relief shall file a motion no later than 10 days after the petition is filed, requesting the court to specify the future course of proceedings. Upon the filing of such a motion, the time limits contained in this

rule shall cease to run pending the issuance of an appropriate order of court. After hearing, the court shall issue an order; provided that such a motion need not be filed in cases where the parties to the proceedings have filed with the court a stipulation as to the future course of proceedings.

(j) Discovery. In a proceeding governed by this rule, discovery shall be allowed as in other civil actions when such discovery is relevant either to the subject matter involved in an evidentiary hearing to which the discovering party may be entitled or to that involved in an independent claim joined with a claim for review of governmental action as provided in subdivision (i) of this rule. No other discovery shall be allowed in proceedings governed by this rule except upon order of court for good cause shown.

(k) Pretrial Procedure. In the absence of a court order, the pretrial procedure of Rule 16 shall not be applicable to a proceeding governed by this Rule.

(l) Scheduling of Oral Argument. Unless the court otherwise directs, all appeals shall be in order for oral argument 20 days after the date on which the responding party's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the court shall schedule oral argument for the first appropriate date after an appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

(m) Appeal to the Law Court. If the court remands the case for further proceedings, all issues raised on the court's review of the agency action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such agency action. Appeal to the Law Court of a review proceeding in the court shall be as provided by 5 M.R.S.A. § 11008.

Advisory Committee's Note
January 1, 2001

P.L. 1999, c. 574, section B-6, amended 4 M.R.S.A. § 152(10) to confer upon the District Court exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to 10 M.R.S.A. § 8003, effective March 15, 2001. Since the statute also required the proceedings be conducted in accordance with the Administrative Procedure Act, substituting the references to "District Court" for "Superior Court" as necessary, an amendment to subdivision (a) of Rule 80C was necessary to prescribe the mode of review in

the District Court of such disciplinary decisions. References in subdivisions (g), (l), and (m) to the "Superior Court" were changed to refer only to "court."

Advisory Committee's Notes
May 1, 2000

Subdivision (n), a transition provision governing actions filed prior to February 15, 1983 is eliminated as no longer necessary.

Advisory Committee's Notes
March 1, 1998

Rule 80C (e) is amended in response to *Service & Erection Co. v. State Tax Assessor*, 684 A.2d 1 (Me. 1996), which held that the rule is inconsistent with the present version of 36 M.R.S.A. § 151. The second sentence of the subdivision, which refers to section 151, and the fourth sentence have been deleted to make Rule 80C consistent with its purpose as the procedural means for review by the Superior Court of final agency action. The rule is not intended to prescribe the procedure for review where a statute provides for a hearing *de novo* or another, exclusive means for review.

Advisory Committee's Notes
June 2, 1997

Rule 80C(m) is amended to clarify that an order of remand from the Superior Court to the governmental agency is not a final judgment from which an appeal lies, absent special circumstances. The amendment is not intended to change the law governing final judgments, moot issues or the preservation of issues for appeal. The amendment simply makes clear that in the ordinary case, an order of remand is not appealable and, to the extent that issues have been properly preserved throughout the course of the proceedings and are ripe for appeal when the remanded issues have been decided, the appeal from the final judgment preserves issues raised prior to the remand.

Advisory Committee's Notes
1990

Rule 80C(e) is amended to make clear that a motion for additional evidence in the Superior Court on an appeal from an administrative agency may not be made until after the record is filed. The purpose of the amendment is to insure that both

the opposing party and the court have the opportunity to consider the record in assessing whether taking additional evidence is warranted.

A similar amendment is simultaneously being made to Rule 80B(e).

Advisory Committee's Notes
1984

Rule 80C(l) is amended in terms identical to the simultaneous amendment of Rule 80B(l) making clear that after the briefing of an administrative appeal to the Superior Court is completed, scheduling for oral argument is automatic and is initiated by the clerk. *See* Advisory Committee's Note to that rule.

1983 Advisory Committee's Note to New Rule 80C

Rule 80C is added to provide a separate rule for proceedings to review final agency action or the failure or refusal of an agency to act brought pursuant to 5 M.R.S.A. § 11001 et seq. of the Maine Administrative Procedure Act (APA). The rule is an exercise of the independent power to adopt rules for such appeals as set forth in 5 M.R.S.A. § 11008(2). Prior to the adoption of this rule, APA appeals as well as non-APA appeals were governed by Rule 80B. That rule is simultaneously amended to effect the establishment of separate tracks for the two classes of appeals. Rule 80C incorporates the specific procedures governing review of final agency action and the failure or refusal of an agency to act set forth in the APA, 5 M.R.S.A. § 11001 et seq. Where additional procedures have been adopted in the present rule, they have for the most part been borrowed from Rule 80B. Therefore, reference should be made to the Advisory Committee Notes to amended Rule 80B for discussion of the provisions of Rule 80C.

Note that judicial review of agency rulemaking is not governed by either Rule 80B or Rule 80C. The APA, in 5 M.R.S.A. § 8058, specifically provides that review of agency rules shall be instituted by an action for declaratory judgment pursuant to 14 M.R.S.A. § 5951 et seq., which is incorporated by Rule 57, or by collateral attack in an enforcement proceeding.

Rule 80C(a) establishes Rule 80C and other applicable provisions of the Rule of Civil Procedure as the procedural mode for review under the APA, "except to the extent inconsistent with the provisions of a statute." Like the comparable provision of Rule SOB(a), this clause refers to direct functional clash. See Advisory Committee's Note to 1983 amendment of that rule. There should be few

instances of such clash, since for convenience Rule 80C incorporates in this subdivision and elsewhere the appropriate provisions of the APA concerning judicial review. Thus, this subdivision incorporates provisions of 5 M.R.S.A. § 11002(1) providing for the filing of a petition for judicial review in an appropriate venue, 5 M.R.S.A. § 11002(2) providing specifically for the contents of the petition, and 5 M.R.S.A. § 11003 providing for service of the petition by mail. The rule also incorporates 5 M.R.S.A. § 11005 providing that a responsive pleading is necessary only when required by order of the court. The final sentence of the subdivision, providing for free amendment of the pleadings, is adapted from Rule 80B(a).

Rule 80C(b) incorporates the 30 and 40-day time limits for filing a petition provided by 5 M.R.S.A. § 11002(3) and the provision of 5 M.R.S.A. § 11004 for a stay upon application to the agency or motion to the Superior Court.

Rule 80C(c) incorporates the provisions of 5 M.R.S.A. § 11007(2)–(4) providing for manner of trial, the integrity of agency decisions on questions of fact, and the form of relief and scope of review that the reviewing court may award.

Rule 80C(d) incorporates 5 M.R.S.A. § 11006(1) limiting review to the record, except for the specific situations where additional evidence may be taken provided in subparagraphs A–D of that paragraph. The subdivision also incorporates 5 M.R.S.A. § 11006(2) permitting the court to require or allow subsequent corrections to the record.

Rule 80C(e) provides the procedure for taking additional evidence when appropriate under 5 M.R.S.A. § 11006(1). The subdivision is basically similar to Rule 80B(d) as amended in Au-gust 1981 and February 1983. See Advisory Committee's Notes to those amendments. Rule 80C(e) creates an exception to the requirement of a detailed statement of evidence which a party, moving for the taking of additional evidence, intends to be taken for cases where a statute specifically provides that the exclusive manner for review shall be a de novo hearing in Superior Court. An example of such a statute is 36 M.R.S.A. § 151 providing for a de novo review of tax assessments by the State Tax Assessor. In such cases it would be unnecessarily burdensome to require petitions to file a detailed statement of proposed evidence because the statute, rather than the court, determines the availability of a trial of facts. This subdivision also makes a special provision for the filing of briefs in tax assessment appeals because there is no record. Other requirements in Rule 80C applicable to such cases may be altered by

the exception in Rule 80C for inconsistent statutory provisions or by a procedural order of the Superior Court under Rule 80C (e) .

Rule 80C (f) incorporates 5 M.R.S.A. § 11005 providing time periods for the filing of the agency record in the court. The subdivision also provides a procedure for supplementation or simplification of the record, as well as a provision adopted from Rule 80B encouraging agreement on the contents of the record.

Rule 80C(g) is similar to Rule 80B(g) added by the August 1981 amendments and amended in February 1983. See Advisory Committee's Notes to those amendments.

Rule 80C (h) is adapted from Rule 80B(h) added by the August 1981 amendments. See Advisory Committee's Note to that amendment.

Rule 80C(i) is similar to the contemporaneous amendment adding Rule 80B(i). See Advisory Committee's Note to that amendment.

Rule 80C(j) is similar to the contemporaneous amendment adding Rule 80B (j). See Advisory Committee's Note to that amendment.

Rule 80C(k) is similar to the contemporaneous amendment adding Rule 80B(k). See Advisory Committee's Note to that amendment.

Rule 80C(l) is similar to what is now 80B(1) originally added as Rule 80B(l) by the August 1981 amendments. See Advisory Committee's Note to that amendment.

Rule 80C(m) incorporates the provisions of 5 M.R.S.A. § 11008(l) for appeal from the Superior Court to the Law Court as in other civil actions.

Rule 80C(n) is similar in effect to Rule 80B(n) adopted by contemporaneous amendment. See Advisory Committee's Note to that amendment.

RULE 80D. FORCIBLE ENTRY AND DETAINER

(a) Applicability to Forcible Entry and Detainer. These rules, so far as applicable, shall govern the procedure in forcible entry and detainer actions in the

District Court and on appeal to the Superior Court and the Law Court, except as otherwise provided in this rule or by statute.

(b) Summons. The summons in forcible entry and detainer actions shall bear the signature or facsimile signature of the judge or the clerk, contain the name and address of the court and the names of the parties, be directed to the defendant, state the day when the action is returnable, which shall be not less than 7 days from the date of service of the summons; and shall notify the defendant that in case of defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant for possession of the premises. The summons shall also notify the defendant that if the return day is on a holiday, the defendant shall appear and state any defense on the day following the holiday.

(c) Complaint. The complaint for forcible entry and detainer shall be filed no later than one day before the date of the hearing.

(d) Defendant's Pleading. If the defendant claims title in defendant's name or in another person under whom the defendant claims the premises, shall assert such claim by answer filed on or before the return day, and further proceedings in the actions shall be as provided by law. Otherwise the defendant may appear and defend without filing a responsive pleading.

(e) Time of Hearing.

(1) *Hearing Date.* All forcible entry and detainer actions shall be in order for hearing on the return day.

(2) *Mediation.* At the time set for hearing, the court may refer the parties to mediation pursuant to the process established by Rule 92(f) of these rules. Every settlement resulting from mediation shall be presented to the court in writing for approval as a court order, and the court shall approve reasonable settlements. An approved settlement shall have the force and effect of a judgment and may not be appealed. If no mediator is available, or if mediation efforts fail or mediation proves inappropriate, the court shall hear the matter without undue delay.

(f) Appeal.

(1) *Appeal on Questions of Law.* Either party may appeal to the Superior Court and the Law Court on questions of law as in other civil actions.

(2) *Appeal by Jury Trial De Novo.*

(A) Notice of Appeal and Demand for Jury Trial. Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. A party who seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury. Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(B) Preparation and Transmission of the Record. The record on appeal shall be prepared in accordance with Rule 76F. The clerk of the division shall transmit the record to the Superior Court within five days of the filing of the notice of appeal, without waiting for a transcript. The clerk of the Superior Court shall docket the appeal on receipt of the record thus transmitted. If a transcript is subsequently received by the clerk of the District Court, it shall be transmitted to the Superior Court immediately and shall be incorporated in the record on appeal by the clerk of the Superior Court.

(3) *Same: Determination on Affidavits.* The appellee may, within ten days after the mailing of the clerk's notice of the docketing of the appeal in the Superior Court, file a counter affidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which notice was timely filed. The court may upon its own motion, or the motion of either party, order that the transcript or relevant portions thereof be incorporated in the record on appeal prior to the court's review of the affidavits and record under this paragraph. The court shall review the affidavits of both parties and the record on appeal, including any transcript or portions thereof ordered to be incorporated as provided in this paragraph, and shall determine whether the appellant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(4) *Same: Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that the appellant has shown in light of the affidavits and the whole record, including any transcript or portions thereof

ordered to be incorporated as provided in paragraph (3) of this subdivision, that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40(a).

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(5) *Same: No Genuine Issue of Fact: Disposition.* If the court finds that the appellant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in paragraph (1) of this subdivision.

(6) *Same: Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the appellant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (5) of this subdivision.

(7) *Same: Rules Inapplicable.* Rules 16, 26-37, 39, 42 and 56 do not apply to jury trials de novo in the Superior Court under this rule.

(g) No Joinder of Other Actions. Forcible entry and detainer actions shall not be joined with any other action, nor shall a defendant in such action file any counterclaim.

(h) Venue. An action for forcible entry and detainer shall be brought in the division in which the property is located.

(i) Removal. There shall be no removal of forcible entry and detainer actions, except as provided by statute.

(j) Issue of Writ of Possession; Stay. A writ of possession shall issue within the time provided by statute after entry of judgment therefore, provided that

(1) If defendant within the time provided by statute makes a timely motion pursuant to any of the rules enumerated in Rule 76D as terminating the running of the time for appeal, the issuance of the writ shall be stayed until five days after entry of an order disposing of the motion;

(2) On motion of defendant filed in the Superior Court within the time provided by statute, or any extension thereof under paragraph (1) of this subdivision, the Superior Court may grant a stay for the full time for appeal, or any extension thereof, allowed under Rule 76D, if the Superior Court finds that defendant's grounds of appeal present a genuine issue of material fact or law;

(3) If defendant files a timely notice of appeal under Rule 76D, issuance of the writ shall be stayed until a stay pending appeal is granted or denied in the Superior Court as provided in paragraph (4) of this subdivision;

(4) When the appeal is docketed in the Superior Court, that court may stay the issuance of the writ pending disposition of the appeal on conditions as provided in 14 M.R.S.A. § 6008.

A copy of the writ of possession shall after issue be retained by the clerk for examination by any interested person.

(k) Stays Upon Appeal to the Law Court. If an aggrieved party appeals from a judgment of the Superior Court in accordance with Rule 76D, an order of the Superior Court staying the writ of possession, together with any conditions imposed pursuant to 14 M.R.S.A. § 6008, shall remain in effect until final disposition of the appeal in the Law Court. Either party may move in the Superior

Court during the pendency of the appeal for modification or amendment of the order as provided in 14 M.R.S.A. § 6008. Nothing in this rule limits the power of the Law Court during the pendency of the appeal to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Advisory Note
December 2007

This amendment to Rule 80D(e), along with the adoption of Rule 92(f), implements the program for available mediation in forcible entry and detainer matters authorized by the Legislature, enacting 14 M.R.S. § 6004-A in P.L. 2007, chap. 246, effective January 1, 2008. The mediation offered in these matters is intended to be similar to the mediation presently offered in Small Claims matters. Mediation should not be a cause for delay of hearings in FED matters.

Advisory Notes
2004

Subdivision (j)(2) is amended to clarify that defendants who move for a stay pending appeal of a forcible entry and detainer judgment must do so in the Superior Court.

Advisory Committee's Notes
December 4, 2001

A new subdivision (c) is added to require that the complaint for forcible entry and detainer be filed at least one day before the hearing to ensure that the complaint is received, docketed, and available to the court at the hearing. Former subdivision (c) is redesignated (d). Subdivision (d) had been abrogated earlier, thus requiring no further redesignations in the rule.

Advisory Committee's Notes
May 1, 1999

Rule 80D is amended in subdivisions (a) and (j) to conform the rule to changes in the governing statute, 14 M.R.S.A. § 6001, *et seq.* (Supp. 1998). The amendments make clear that the statute governs the procedure where the statute is explicit, such as the time period for issuing a writ of possession set forth in 14 M.R.S.A. § 6005.

Advisory Committee's Notes
February 15, 1996

Rule 80D is amended for conformity with the amendment of 14 M.R.S.A. § 6008 by P.L. 1995, ch. 448, § 2. The statute was amended to address problems that had arisen in appeals of forcible entry and detainer actions caused by delays in transcript production and by stays on appeal to the Superior Court. The amended rule also provides for stays on appeal to the Law Court in FED actions.

Rule 80D(a) is amended to make clear what was already the case, that appeals from the Superior Court to the Law Court in FED actions are governed by Rule 72-76B and other applicable provisions of the Rules of Civil Procedure, except as those rules may be modified by this rule. *See, e.g.*, Rule 80D(k), added by simultaneous amendment.

Rule 80D(d) is abrogated. Since Rules 80D(f)(2)-(7) were added in 1990 to provide for appeal by jury trial de novo, virtually all FED actions have been tried in the District Court in the first instance.

Rule 80D(f)(1) is amended, consistent with the simultaneous amendment of Rule 80D(a), to make clear that decisions on questions of law may be appealed from the Superior Court to the Law Court.

Rule 80D(f)(2) has been divided into subparagraphs (A) and (B). What is now subparagraph (A) has been amended to make clear that the notice of appeal is that provided by Rule 76D for other District Court appeals, with the additional material necessary to claim and establish the right to jury trial. Subparagraph (B) is intended to implement 14 M.R.S.A. § 6008(2), enacted by P.L. 1995, ch. 448, § 2. Within five days after the notice of appeal is filed, the District Court clerk is to transmit to the Superior Court all components of the record except the transcript, unless the transcript is already in hand. Pursuant to Rule 76F(a), these components are "[t]he original papers and exhibits filed in the District Court and a certified copy of the docket entries." The Superior Court clerk is to docket the appeal upon receipt of the record. If a transcript has been ordered and is subsequently received, the District Court clerk is to send it immediately to the Superior Court, where it becomes part of the record. This provision applies whether the transcript is to be used pursuant to court order for determination of the jury trial question as provided in amended Rule 80D(f)(3) or has been ordered by a party for another purpose,

such as to support an appeal on an independent and material question of law pursuant to Rule 80D(f)(5) or (6).

Under Rule 80D(f)(3) as amended, the determination whether there is a genuine and material issue for jury trial is ordinarily made only on the parties' affidavits and counter affidavits and the record initially transmitted pursuant to paragraph (2). This determination may be delayed for consideration of the transcript only if the court, on its own or a party's motion, so orders. A transcript subject to such an order is to be ordered and paid for by the parties as provided in Rule 76H(2)(B). The rule is not intended to prevent a party from ordering a transcript for another purpose.

Rules 80D(f)(4) and (j)(4) are amended for consistency with the amendments of Rules 80D(f)(2) and (3).

Under new Rule 80D(k), on appeal to the Law Court any stay of the writ of possession granted by the Superior Court pursuant to Rule 80D(j)(4) and 14 M.R.S.A. § 6008(2), as enacted by P.L. 1995, ch. 448, § 2, remains in force, as do any conditions imposed pursuant to the statute. A motion to modify or amend the conditions pursuant to 14 M.R.S.A. § 6008(2)(A), (3), (5), pending the Law Court appeal must be made to the Superior Court. The final sentence of the rule, recognizing the inherent power of the Law Court to protect the integrity of proceedings before it, is similar to Rule 62(g).

Advisory Committee's Notes
1990

Rule 80D is amended to provide a procedure for the right to jury trial de novo on appeal to the Superior Court in forcible entry and detainer actions recognized by the Law Court in *North Sch. Congregate Hous. v. Merrithew,* 558 A.2d 1189 (Me. 1989), and to clarify the rules pertaining to stay of the writ of possession after judgment in such actions. The amendments implement 14 M.R.S.A. § 6008 as amended by P.L. 1989, ch. 377 (effective June 20, 1989).

Rule 80D(a) is amended to make clear that the Rules of Civil Procedure generally apply to forcible entry and detainer actions not only in the District Court but on appeal in the Superior Court, unless they are obviously inapplicable to such proceedings or conflict with the provisions of Rule 80D. Such conflict exists if Rule 80D prescribes a procedure contrary to that provided for other actions under the Rules. In addition, Rule 80D(f)(7), added by these amendments, expressly

declares that certain of the Rules are inapplicable to jury trial de novo on appeal in forcible entry and detainer actions.

The amendments of Rule 80D(f) clarify the situation regarding appeals and provide a procedure for appeals by jury trial de novo. New paragraph (1) has the effect of extending the appeal period for forcible entry and detainer actions from the five days previously provided by subdivision (f) to the ten days allowed in other District Court civil actions under Rule 76D and 14 M.R.S.A. § 1901. The recognizance requirement is eliminated pursuant to the 1989 amendment of 14 M.R.S.A. § 6008, supra. The provisions of Rule 76D extending the time for appeal in certain situation are now also applicable to forcible entry and detainer actions, and other Civil Rules provisions pertaining to District Court appeals also apply. Such uniformity is consistent with the language of 14 M.R.S.A. § 6008 as amended. The need for "prompt execution" recognized in the 1962 Committee Note to former M.D.C. Civ. R. 80D is satisfied by the retention in M.R. Civ. P. 80D(j) of the provision for automatic issuance of the writ of possession five days after entry of judgment, subject to stay in appropriate circumstances.

Rules 80D(2)-(7) effectuate the right to jury trial de novo on appeal recognized in *North School* and 14 M.R.S.A. § 6008 as amended. The amendments create a procedure similar to that provided for appeals with jury trial de novo where it is matter of right in small claims actions. *See* M.R.S.C.P. 11(d), M.R. Civ. P. 80L. Amended Rule 80D incorporates the basic procedure for an appeal from the District Court except as modified. If either party seeks a jury trial de novo on appeal, the notice of appeal must include a written jury demand and must be accompanied by an affidavit or affidavits in a form appropriate under Rule 56(e), specifically showing that there is a genuine issue of material fact as to which the appellant is entitled to a jury trial. Failure to make a timely demand leaves the appeal to be carried forward on questions of law only under paragraph (1).

Under paragraph (2), preparation and transmission of the record and any necessary portions of the transcript on an appeal with jury trial de novo are identical to the comparable steps in an appeal on questions of law. Paragraph (3) provides that after notice of the docketing of the appeal, the appellee may file affidavits and thereby invoke what is in effect an automatic summary judgment review by the court. In this procedure, the court not only determines whether there is a genuine issue of fact for trial, but whether it is an issue as to which there is a right to trial by jury. This paragraph and paragraphs (4), (5), and (6) are virtually identical to Rule 80L(c)(1)-(4). In summary, if there is an issue of fact appropriate for trial by jury, the action is expedited through a simplified procedure that may

involve pretrial memoranda and pretrial conference if the court feels that these steps are warranted. If the court finds that there is no genuine issue of fact triable by jury, it is to dismiss the action unless there is an independent question of law also raised on the appeal. In such case, or if the appellant withdraws the jury demand before the jury is empanelled, the court may review any such issue of law as in other District Court civil appeals. *See, generally*, Advisory Committee's Note to Rule 80L.

In other respects, provisions of the Maine Rules of Civil Procedure and the Maine Rules of Evidence governing trials, as well as those governing appeals from the District Court, apply by virtue of Rule 80D(a), with the exception of the Rules enumerated in new Rule 80D(f)(7). Rule 16 is expressly made inapplicable, because new Rule 80D(f)(4) provides a simplified pretrial procedure. Rules 26-37 are inapplicable, because the first trial in the District Court has already provided one discovery opportunity, and access to the full discovery procedures of the Civil Rules would unduly delay what is intended to be a simplified procedure. Rule 39 is inapplicable, because the only trial of the facts permitted in the Superior Court under these amendments is a trial to a jury. Rule 42 is inapplicable consistent with the provision of Rule 80D(g) and (h), prohibiting joinder and setting the venue of forcible entry and detainer actions in the district where the property is located. Rule 56 is declared inapplicable, because new Rule 80D(f)(3) establishes what is in effect a summary judgment procedure.

Rule 80D(j) is amended to clarify the situation with regard to stay of issuance of the writ of possession in forcible entry and detainer actions. Experience in the District Court under the existing rule, as well as the new situation created by the simultaneous amendments to Rule 80D(f) concerning appeal by jury trial de novo, make such clarification necessary. Rule 62(a) continues to be silent concerning stay of a writ of possession. Writs of possession in real actions in the Superior Court continue to be governed by Rules 62(a) and 80A and 14 M.R.S.A. § 6704.

Under new Rule 80D(j)(l) the writ is automatically stayed if defendant makes a motion for findings or amendment of findings under Rule 52 or for amendment of the judgment or a new trial under Rule 59. As Rule 76D recognizes, a party cannot intelligently determine whether to take an appeal until the disposition of such motions. The right to appeal is essentially nullified if dispossession can occur under the writ before the appeal can be perfected. Paragraph (2) permits a stay for the full appeal period permitted under Rule 76D upon a finding that the appeal presents genuine issues. Paragraph (3) provides an

automatic stay of the time for filing a notice of appeal until the question of whether to stay the writ pending disposition of the appeal is decided in the Superior Court as provided in 14 M.R.S.A. § 6008, incorporated in new Rule 80D(j)(4). These provisions, too, are intended to prevent execution of the writ of possession from making the right to appeal meaningless.

Note that issuance of the writ of possession may also be precluded by Plaintiff's failure to rebut the presumption of retaliation established by 14 M.R.S.A. § 6001(3).